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REMARKS

I. ALLOWABLE SUBJECT MATTER

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for finding claim 13 allowable. However as stated below, Applicants respectfully believe that the underlying base claim is allowable, and therefore do not elect to place claim 13 in condition of allowance at this time.

Claims 35-46 have been allowed.

II. REJECTION UNDER 35 U.S.C. §103 IN VIEW OF MURPHY AND SEN

Claims 1-12, 14-27, and 30-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Murphy (U.S. Patent No. 6,856,613 B1, hereafter "*Murphy*") in view of Sen et al. (U.S. Patent No. 6,330,451 B1, hereafter "*Sen*"). In response, Applicants respectfully traverse these rejections.

The Cited References do not Disclose a Network Device Coupled to a Modem Through a Telephony Device.

Claim 1 recites "a first network device *coupled to the modem through the first telephony device.*" Claim 16 recites "a telephone coupled to the modem, and a workstation *coupled to the modem through the telephone.*" Claim 22 recites "a telephony device *coupled between a network device and a modem.*" The *Murphy* and *Sen* references, either alone or in combination, do not teach or suggest the above recited features.

In contrast, *Murphy* figure 1 specifically teaches that network and telephony devices 14C-14D are separately connected to IP Network 30, without any indication or suggestion of coupling through one another. *Sen* has the same deficiency. For example, in *Sen* figure 2 the computer 116 and telephone 114 are separately connected to the PSTN 110 without coupling

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through one another. Clearly, the combination of *Murphy* and *Sen* does not teach, nor suggest, coupling a first network device to a modem through a first telephony device.

In an attempt to remedy this deficiency, the Examiner references Fuller et al. (U.S. Patent No. 7,203,186 B1, hereafter "*Fuller*") in an attempt to show that the configuration of a modem coupled to the IP telephone is well-known in the art. However, even if *Fuller* were to show that the use of a modem in VoIP communications systems *in general* is well-known, the reference does not show that the *specific configuration* recited in claims 1, 16, and 22 (emphasized above) is common in the art. For example, *Fuller* figure 1 shows IP telephone 18 and computer systems 17 are not coupled through one another. The addition of *Fuller* does not remedy the deficiencies of *Murphy* and *Sen*. As a result, one skilled in the art would not have combined *Fuller* with *Murphy* and *Sen* to arrive at the limitations in the claims, since a combination of these references does not suggest coupling a network device to a modem through a telephony device.

Furthermore, the Examiner has not officially combined the *Fuller* reference with the *Murphy* and *Sen* references to arrive at the current 103(a) rejection, and has provided no independent evidence to support a finding that such a combination is warranted. For this reason alone, since the Examiner is relying upon *Fuller* to suggest the rejection, the Examiner's *prima facie* case of obviousness fails. Nevertheless, the *Fuller* art alone or in combination with *Murphy* and *Sen* still does not make obvious the limitations in the claims for the foregoing reasons.

As described above, neither *Murphy* or *Sen*, either alone or in combination, disclose a "network device coupled to the modem through the first telephony device" (claim 1), "a workstation coupled to the modem through the telephone" (claim 16), or "a telephony device coupled between a network device and a modem" (claim 22). Therefore, the limitations of the claims would not have been obvious to one of ordinary skill at the time of invention.

The Cited References Do Not Disclose Circuitry for Throttling Data Sent from the First Network Device to the Telephone.

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Claim 1 recites "the first telephony device includes first circuitry for throttling data sent *from the first network device.*" Claim 16 recites "throttling data sent *from the workstation to the telephone....*" Claim 22 recites "sufficiently throttling the data *from the network device to the telephone device....*"

As the Examiner concedes on page 3 of the office action, *Murphy* does not disclose a telephone device that includes a circuitry for throttling data sent from the first network device and the telephone coupled to a modem. The Examiner's rejection specifically relies upon the teachings of *Sen* to address this limitation. However, the addition of *Sen* fails to remedy this deficiency. *Sen* specifically teaches a system that services high bandwidth data communication between data communication subscriber 130 and computer 116 on a single channel. Column 6, lines 30-39. Contrary to the Examiner's position, delay element 105 in *Sen* does not meet the claim limitations recited above because it only throttles data sent between computer 116 and subscriber 130. Though the channel in *Sen* is shared with voice communications (column 6, lines 33-41) there is no throttling of data destined for the telephone in *Sen*, as required by the claim limitations.

Furthermore, the incorporation of the delay element 105 taught in *Sen* within the VoIP phone 14C of *Murphy* would fail to arrive at the limitations of the claims. In such a scenario, the data to be throttled from the VoIP phone 14C would be sent from the VoIP phone itself and not from a first network device, as required by the limitations in the claims. As each of the elements of claims 1, 16, and 22 have not been rendered obvious in light of the prior art, the claims are allowable.

The Cited References do not Disclose Transferring Data from the Network Device to the Telephone wherein the Data is Addressed for Transmission to a Network.

Claim 16 recites "transferring data from the workstation *to the telephone*, wherein the data sent from the workstation is addressed for transmission to a network...." Claim 22 recites "transferring data from the network device *to the telephone* device where the data is addressed for transmission through the telephony device to the wide area network...." Claim 30 recites "a

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telephony device comprising an input data port for receiving data, wherein the data is addressed for transmission to a location other than the telephony device through an output port on the telephony device....” The Examiner has not specifically addressed this claim language, and thus the claims are patentable since the Examiner has failed to establish a *prima facie* case of obviousness.

The Cited References do not disclose an input data port for receiving data or an output port on the telephony device.

Claim 30 recites “a telephony device comprising *an input data port*....” The claim further recites “data is addressed for transmission to a location other than the telephony device *through an output port* on the telephony device....” As mentioned above, the Examiner has not specifically addressed this claim language, and thus the claim is patentable since the Examiner has failed to establish a *prima facie* case of obviousness.

Nevertheless, neither *Murphy* nor *Sen* disclose an input data port or output port on the telephony device, as required by the claim limitations. The teaching of endpoints 14A-14D of *Murphy* is devoid of any disclosure of an “input data port for receiving data” or “an output port on the telephony device.” See column 2, line 50 – column 3, line 16. Likewise, *Sen* teaches the operation of telephone 114 and phone 120 without disclosing either an input data port or an output port on the telephony devices. Column 4, lines 15-65; column 6, lines 30-34. Additionally, neither *Murphy* nor *Sen* teach “data addressed for transmission to a location other than the telephony device.” As a result, the cited prior art references, either alone or in combination, fail to teach or suggest the limitations recited in claim 30.

Additional Limitations of Dependant Claims are Absent in the Cited References.

The Examiner has not addressed claim 2 in the office action, aside from mentioning that it stands rejected under 103(a). Therefore, claim 2 is patentable since the Examiner has failed to establish a *prima facie* case of obviousness in rejecting claim 2.

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Claim 7 recites "the first throttling circuitry *reduces a future amount of data* from being transferred from the first network device...." Claim 8 recites "throttling circuitry reduces a *future amount of data* from being transferred from the first network device." Claim 19 recites "the step of *reducing a future amount of data* from being transferred...." Claim 23 recites "the throttling step *reduces a future amount of data* from being transferred from the network device to the telephony device."

Applicants respectfully assert that *Murphy* does not disclose throttling circuitry that reduces the future amount of data sent, contrary to the Examiner's assertion on page 4 of the office action. The throttling circuitry in *Murphy* is located within the network, and is not located within the telephony device as recited in claims 1 and 8. Thus, the combinations of the reference do not teach or suggest the limitations recited in the claims.

Claim 8 further recites "the first telephony device includes circuitry ... wherein the circuitry reduces a future amount of data from being transferred from the first network device *if the amount of data addressed to and received by the first telephony device falls below a predetermined threshold*." The Examiner has not specifically addressed this claim language, and thus the claim is patentable since the Examiner has failed to establish a *prima facie* case of obviousness.

Nevertheless, the teachings of *Murphy* and *Sen* fail to address the limitations of the claim. The limitation requiring that the "circuitry reduces a future amount of data from being transferred from the first network device if the amount of data addressed to and received by the first telephony device *falls below a predetermined threshold*" is not met. Contrary to the limitations of the claims, the buffer load monitor 48 in *Murphy* monitors the current free queue 52 to determine when a throttle condition exists, not the amount of data. Column 5, lines 31-35. Likewise, the QoS manager 460 in *Sen* performs computations to determine the number of data communications to be delayed and the delay to be introduced into each delayed communication. Column 11, lines 30-34. *Sen* does not teach that the QoS manager operates once data "falls

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below a predetermined level." Thus, neither of these teachings, either alone or in combination arrive at the limitations of claim 8.

Claim 9 recites "monitoring circuitry *comprises* a jitter buffer where the predetermined threshold is a predetermined level within the jitter buffer." Neither *Murphy* nor *Sen* teach monitoring circuitry comprising a jitter buffer. *Murphy* figure 2 teaches that CPU 25 comprises buffer load monitor 48. *Murphy* figure 2 also teaches that buffer 24 comprises current free queue 52. Buffer load monitor 48 monitors current free queue 52 to determine when a throttle condition exists. Column 5, lines 31-32. However, neither CPU 25 nor buffer load monitor 48 comprise a jitter buffer as required by the above claim limitations. Rather, *Murphy* figure 2 teaches that CPU 25 and buffer load monitor 48 are separate from buffer 24. The addition of *Sen* does not make the case for obviousness any more plausible, as *Sen* offers no teaching of a buffer. Thus the teachings of the cited references, either alone or in combination do not arrive at the limitations of claim 9.

Claim 10 recites the "throttling circuitry has a plurality of throttling levels." The Examiner has not specifically addressed this claim language, and thus the claim is believed to be patentable since the Examiner has failed to establish a *prima facie* case of obviousness.

Claims 11 recites "the first throttling circuitry includes a mode level...." Contrary to the Examiner's assertion, *Murphy* does not disclose such a mode level in column 3, lines 30-35. *Murphy* teaches the throttling of the rate of VoIP packets 26 by varying the number of samples of the audio bitstream 18. Column 3, lines 34-35. However, the Examiner has expanded this language in *Murphy* to include the recital of a mode level in arriving at the rejection of claim 11. No objective evidence from *Murphy* has been offered to support this interpretation. As a result, the Examiner's interpretation amounts to an unreasonably broad interpretation of the teachings of *Murphy*. MPEP §2111.

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Claim 14 recites "data sent from the first network device is sufficiently throttled so that the first telephony device can communicate real-time multimedia signals to and from the modem." On page 4 of the office action, the Examiner relies upon *Sen* to disclose the required limitations that are absent in *Murphy*. The language relied upon in *Sen* recites "[t]he manner in which the data communications are managed is by selectively delaying data communications within wired portions of the wireless communications system so that they proceed across the wireless links at a lesser data rate." Column 5, lines 31-35. Applicants respectfully assert that this language fails to teach "the first telephony device can communicate real-time multimedia signals to and from the modem." Furthermore, the Examiner has attempted to combine *Murphy* and *Sen* on page 5 of the office action in order to show that it would have been obvious to one of ordinary skill in the art to throttle sufficient bandwidth in multimedia transmissions so that voice is prioritized over real-time transmissions. However, claim 14 recites "data sent from the first network device is sufficiently throttled *so that the first telephony device can communicate real-time multimedia signals to and from the modem.*" The Examiner's argument that the cited references teach the *throttling of multimedia signals* fails to meet the above cited limitations of claim 14. Thus, the limitations of claim 14 are not obvious in light of the cited references, whether they are considered alone or in combination.

Claim 15 specifically recites a modem, yet the Examiner's appeal to *Murphy* figure 1 on page 5 of the rejection fails to disclose such an element. As the Examiner has not specifically addressed the claim language within claim 15, the claim is therefore patentable since the Examiner has failed to establish a *prima facie* case of obviousness.

The Examiner fails to address the particularity of claims 20 and 21, referring in the rejection only to the monitoring of a predetermined level within a jitter buffer, as addressed in previous rejections. Thus, the Examiner has not specifically addressed the claim language within claims 20 and 21 and these claims are patentable since the Examiner has failed to establish a *prima facie* case of obviousness.

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Claim 31 recites "the jitter buffer temporarily stores the information." Neither of the cited references teaches this limitation. To the contrary, *Murphy* teaches that a percentage of DSPs 22 are throttled, rather than dropping packets when a throttling condition is detected. Column 4, lines 16-26. There is no mention of the storage of information in this process. Additionally, the flowchart in *Murphy* figure 3, which explains how the disclosed packet throttle software operates, also fails to teach the temporary storage of information. *Sen* does not remedy this deficiency. Though *Sen* discloses a method for adding delay via delay element 105 (column 6, lines 66-67), there is no teaching of the temporary storage of information. Rather, *Sen* teaches the increase of RTD as a means of ultimately reducing the data rate of communications from computer 130. Column 7, lines 1-4. Therefore, one skilled in the art at the time the invention was made would not have combined the teachings of *Murphy* with the teachings of *Sen* to arrive at the limitations of claim 31.

Claim 32 recites "level 2 switching circuitry for handling the information and data." On page 5 of the rejection, the Examiner asserts that *Murphy* discloses an IP telephone with level 2 switching circuitry in column 5, lines 20-27. However, this language fails to address the limitations set forth in the claim. Specifically, the office action has not explained how the recited language equates to level 2 switching circuitry. There is not even a mention of level 2 switching within either *Murphy* or *Sen*.

III. REJECTION UNDER 35 U.S.C. §103 IN VIEW OF MURPHY AND SEN AND IN FURTHER VIEW OF FULLER

Claims 28 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Murphy* in view of *Sen* and further in view of *Fuller*. In response, Applicants respectfully traverse this rejection.

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Claims 28 and 29 are patentable for reasons given above with respect to claim 1, since the Examiner refers to the combination of the cited references used in rejecting claim 1 as a basis for rejecting claims 28 and 29 on page 6 of the office action.

Claim 29 recites "a router coupled between the modem and telephony device." Contrary to the Examiner's assertion on page 6 of the office action, *Fuller* in combination with *Murphy* and *Sen* does not disclose a modem 22 coupled to an IP phone 18 via a router. No router is present in figure 1 of *Fuller*. Since neither *Murphy* nor *Sen* teach the use of a router either, the combination of these references with *Fuller* does not arrive at a router coupled between the modem and telephony device as required by claim 29 either. Accordingly, a limitation of the claimed invention is not met through the combination of the cited prior art references. As a result, the office action has failed to establish a *prima facie* case of obviousness in rejecting claim 29.

Furthermore, the rejection has overlooked the requirement that the "router [be] coupled between the modem and telephony device." The rejection asserts that "it would have been obvious to transmit multimedia data comprising voice, data [sic] in *Murphy* with data being throttled for increasing the rate of voice communication to enhance qos in VOUIP [sic] network." Such an obviousness assertion is without any objective support, which is required under the case law. Nothing in the references suggest that a router be coupled between the modem and the telephony device, as required by the claim limitations. Therefore, one skilled in the art at the time the invention was made would not have combined the teachings of *Fuller* with the teachings of *Murphy* and *Sen* to arrive at the claim limitations. The *Murphy* and *Sen* references combined do not teach or suggest the limitations of claims 28 and 29, and merely adding a teaching from *Fuller* with *Murphy* and *Sen* does not bolster the obviousness arguments for the foregoing reasons.

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IV. CONCLUSION


As a result of the foregoing, it is asserted by Applicants that the remaining claims in the application are in condition for allowance, and respectfully request an early allowance of such claims.

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

Date: _____

June 19, 2008



Kelly K. Kordzik
Reg. No. 36,571

Fish & Richardson P.C.
One Congress Plaza
Suite 810
111 Congress Avenue
Austin, TX 78701
Telephone: (512) 472-5070
Facsimile: (512) 320-8935

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